


**REMARKS**

This Amendment is being filed after final rejection to remove a formal issue from an appeal that is being taken from the prior art rejections. The "minimum" number added to the preambles of each of the independent claims by the last responsive amendment filed September 11, 2008, is being removed by this Amendment. This is in response to the rejection of all the claims under 35 U.S.C. § 112, second paragraph, on account of "minimum" being present in the claims. Although it is believed that this rejection is not well taken, it is desired to remove this issue from appeal.

A Notice of Appeal is being filed at the same time as this Amendment. Because this Amendment seeks to remove an issue from appeal, it is within an exception of M.P.E.P. § 414.13 II, second paragraph, (page 700-261, Rev. 6, Sept. 2007) to 37 C.F.R. § 1.116(b)(3). Additionally, this Amendment could not have been made earlier since it is in response to the most recent Office Action, where it was first raised. Also, this Amendment should require only a cursory review by the Examiner. Entry of this Amendment and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, are therefore respectively requested.

**FILED VIA EFS**

Respectfully submitted,

  
Gerald P. Parsons  
Reg. No. 24,486

April 20, 2009  
Date

Davis Wright Tremaine LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111-6533  
(415) 276-6500 (main)  
(415) 276-6534 (direct)  
(415) 276-6599 (fax)  
Email: geraldparsons@dwt.com